Supreme Court, U. S.
FILED
SEP 8 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1978

No. 78-395

JOHN V. TERRY and ALINE S. TERRY,
Petitioners,

vs.

KLAMATH PRODUCTION CREDIT ASSOCIATION,
a corporation,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

Neither the California Supreme Court nor the California Court of Appeal issued an opinion with respect to the dismissal of Petitioners' appeal. The order of the Court of Appeal granting Respondent's motion to dismiss Petitioner's appeal as frivolous is attached hereto as Appendix "A".

JURISDICTION

Petitioners invoke this Court's jurisdiction under Title 28 United States Code Section 1257(3).

QUESTION PRESENTED

Whether the dismissal of Petitioners' state court appeal as frivolous denied Petitioners due process of law.

STATEMENT

An action was commenced by Klamath Production Credit Association in 1971 to recover money due under notes made by John V. Terry and Aline S. Terry and to foreclose upon the security for the notes. The Terrys filed a cross-complaint claiming that Klamath Production Credit Association had been guilty of deceit and undue influence. The case was tried in the Superior Court, Siskiyou County, and a verdict in favor of Terrys on their cross-complaint was entered.

Klamath Production Credit Association appealed to the California Court of Appeal, Third Appellate District, arguing, among other things, that there was no substantial evidence to support the judgment. The Court of Appeal reversed the judgment. The Terrys petitioned to the Court of Appeal for a rehearing; the petition for rehearing was denied. The Terrys then petitioned the California Supreme Court for a hearing; the petition for hearing was denied.

Following the remittitur to the trial court, the Terrys filed an action in the United States District Court, Eastern District of California, claiming that Klamath Production Credit Association and three justices of the Court of Appeal had violated Terrys' civil rights. The district court dismissed the action and the United States Court of Appeals for the Ninth Circuit affirmed the dismissal. The Terrys petitioned this Court for a writ of certiorari [United States Supreme Court No. 77-871]; the petition was denied.

Meanwhile, the state court severed Terrys' cross-complaint and granted summary judgment in favor of plaintiff Klamath Production Credit Association on its complaint. Terrys filed their notice of appeal from the judgment entered upon the complaint. Klamath Production Credit Association moved to dismiss the appeal as frivolous, and the Court of Appeal granted the motion. The California Supreme Court denied Terrys' petition for a hearing in that court.

ARGUMENT

THE PETITION FOR WRIT OF CERTIORARI IS AN ATTEMPT TO RELITIGATE MATTERS FINALLY DECIDED

Petitioners' appeal to the California Court of Appeal from the order granting summary judgment raised no question whatsoever concerning the validity of that order. Rather, their opening brief argued that the court had incorrectly reversed the initial judgment. Rejecting the attempt to relitigate the prior appeal, the Court of Appeal dismissed the appeal as frivolous.

The petition for writ of certiorari now presented to this Court again repeats the charge that petitioners have been denied due process of law by the California courts. These claims have been found to be legally groundless by the California Court of Appeal, the California Supreme Court, the United States District Court for the Eastern District of California, the United States Court of Appeals for the Ninth Circuit, and by this Court.

The only new factor added to the case is Petitioners' claim that the California Supreme Court sealed their fate by refusing to transfer their appeal to another appellate district whose judges Petitioners had not sued. This charge has no more substance than any of their other claims. The issue was not even raised when Petitioners sought a hearing in the California Supreme Court. In fact, Petitioners could have disqualified any justice under the provisions of the California Code of Civil Procedure if any justice of the Court of Appeal was thought to be prejudiced. Further, the justices who granted the motion dismissing the appeal as frivolous were not even the same as those who heard the earlier case and had thereupon been sued by Petitioners. Petitioners' claim that they have been treated unfairly by the California courts has no basis in fact. If Petitioners were treated summarily in their second appeal, it was simply because their appeal raised not a single new issue and had no semblance of substance.

CONCLUSION

No substantial question is raised by the petition for writ of certiorari. It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

Dated: August 29, 1978.

FORREST A. PLANT,
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Attorneys for Respondent Klamath Production Credit Association.

(Appendix "A" Follows)

APPENDIX A

Appendix "A"

In the Court of Appeal
State of California
Third Appellate District

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3 Civil No. 17,132
Siskiyou 24,951

Klamath Production Credit Association,

vs.

John V. Terry.

[Filed Apr. 21, 1978]

BY THE COURT:

Respondent's motion to dismiss the appeal is granted and the appeal filed August 31, 1977, is dismissed. Appellants' motion for summary judgment in favor of appellants is dismissed as moot.

Dated: April 21, 1978.

JANES, Acting P.J.

(Evans, J. voted to impose costs against appellants)

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